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Post-Capitalist Property

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Introduction: Post-Capitalism and the Marx Puzzle

This paper addresses a puzzle which at first glance might seem rather parochial but which is, we believe, of considerable practical as well as theoretical importance. The puzzle is that surrounding Marx's ideas about property and, in particular, property in his imagined 'post-capitalist' society of the future. It is well known that Marx was critical of 'capitalist private property' in the means of production. In the 1844 *Manuscripts*, for example, he anticipated with enthusiasm the replacement of capitalist societies based on private property by communist societies based on 'truly human and social property' (Marx, 1970 [1844], p.118). In similar vein, in *Capital*, written twenty years later, he looked forward to the 'transformation of capitalistic private property ... into socialised property' (Marx, 1961 [1867], p.715), and in *the Critique of the Gotha Programme* contemplated the creation of 'co-operative property' and a 'co-operative society based on common ownership of the means of production' (Marx, 2010b [1875], p.345). It is often forgotten, however, that in the *Manuscripts* he also wrote of the need to preserve the 'positive essence of private property' (Marx, 1970 [1844], p.135); that in *Capital* he anticipated not only the emergence of 'socialised property' but the simultaneous establishment of 'individual property' (Marx, 1961 [1867], p.715); and that in *The Civil War in France* he praised the Paris Commune's attempt to 'make individual property a truth' (Marx, 2010a [1871], p.213). Even a sympathetic commentator like Chris Arthur is driven to ask, 'What on earth does [this] mean'? (Arthur, 2004, p.114) How can 'individual property' and 'socialised'/'truly social property' in the means of production co-exist?

The search for alternative post- and non-capitalist property forms that reconcile the individual and the social has, arguably, never been more urgent. In the West, as the social and political consequences of faltering growth, rising debt, and increasing inequality, in-work poverty, personal insecurity and social instability gradually manifest themselves, many are beginning to question whether a financialized capitalism in which more and more of the means and processes of production and reproduction have been privatized and marketized can survive. Wolfgang Streeck, for example, has abandoned the idea that 'an alternative, socially embedded, domesticated kind of capitalism' (of the sort associated with post-war Germany) can be sustained and, concluding that capitalism's future is

‘bleak’, has begun speculating about how it will end (Streeck, 2012; 2015, 2016; see also Wallerstein et al, 2013). In similar vein, others have started hypothesizing about what will come *after* it (Mason, 2015). Even those who think (or assume) capitalism will pull through have started pondering the impact of further advances in artificial intelligence and automation (Brynjolfsson & McAfee 2014), with some fearing a descent into an unstable and unhappy ‘hyper-capitalist dystopia’ (Lanchester 2015, p.8). In its recent quadrennial report on global trends, prepared for the incoming President, the US National Intelligence Council agrees that technological advances are likely to contribute to ‘a dark and difficult near future’. The ‘central puzzle’ facing ‘governments and societies’, it suggests, is ‘how to blend individual, collective, and national endowments in a way that yields sustainable security, prosperity, and hope’ (NIC, 2017, ix, 69). In this context, the question of whether it really is possible, as Marx believed, to devise post-capitalist property forms that blend and reconcile the individual and the social seems unusually pertinent.

In this paper, we explore possible resolutions of the ‘Marx puzzle’ by addressing two further puzzles, both involving the Household Responsibility System (HRS) which emerged in China in the late 1970s. The first centres on land ownership under the HRS. Whenever he went to ‘a village, a rural enterprise, or a mosque’, Peter Ho tells us, he began by asking ‘a simple question: Who owns the land?’ But he didn’t get simple answers: ‘the same plot of land’ was, apparently, ‘owned by as *many different persons* and legal entities as the question was put to ...’ (Ho, 2005, p.2). Seeking an answer to the same question, however, Zhu and Jiang drew the rather different conclusion that under the HRS ‘*no one* in the community is a real owner of land’ (Zhu & Jiang, 1993, p.447). Which is it: everyone or no one? The second puzzle centres on the HRS’s success in alleviating rural poverty by raising productivity and output (Nolan, 1993; Upham, 2009). Believing that the creation and allocation of clearly defined and well protected *private* property rights is a pre-requisite of economic development, many commentators have been surprised, if not perplexed, by the HRS’s successes. Even now, as China seeks further to modernize its agricultural sector, many continue to insist that institutional arrangements embodying the sort of ‘fuzzy property’ (Verdery, 1998) found in the HRS don’t offer a long term alternative to neoliberal models of development based on clearly defined private property rights and free market exchange. The HRS might work in practice, but it will never work in theory.

This paper examines the HRS against the backdrop of, firstly, Marx's ideas about property, arguing that Marx provided valuable insights into the historical and social relational nature of property and the different social functions it needs to perform; and, secondly, against the backdrop of subsequent theorising about the legal nature of property in which property has come widely to be conceptualised not as a single, unitary, 'ownership' right to a thing (or, indeed, as the thing itself) but as a 'bundle-of-rights'. The paper does not seek to explore the bundle-of-rights theory of property in any detail, or comprehensively to evaluate the HRS and its fate in recent years as the Chinese state has sought to facilitate scaled-up, more specialised, technologically advanced and productive farming methods. Nor does it enter into the debates about the extent to which Chinese agriculture (or China more generally) has become capitalist. It seeks, rather, to argue that the HRS shows that individual and social property can indeed be reconciled, not only by constructing different property rights structures for different resources – private property in some resources, collective (public) property in others, and common property in still others – but, as Marx intimated, *within* property rights structures through a fragmentation of the property rights 'bundle'. In this process, we seek to throw light both on the institutional architecture of the HRS as a property regime and on the roots of its success, and to highlight the extraordinary malleability of property rights structures and the many and varied ways in which 'individual property' and 'social property' in the means of production might co-exist. In doing so, and in the context of what history might show to be a Gramscian 'interregnum' in which the old is dying but the new has yet to be born (1971 [1930], 275-76), we seek also to underline the need to abandon ideas about history as an orderly succession of social forms and to highlight the range of institutional possibility and importance of bottom-up, as well as top-down, experimentation.

The Hegelian roots of Marx's ideas about property

Over the last sixty or so years, China's rural regions have undergone a series of transformations in which changes to property rights in and over land have been central. Rural China has seen a shift from a regime based largely on private property, albeit with feudal remnants, to a fully collectivist regime, to a more complex, hybrid regime based on the HRS (Lin, 1990; Meng, 2016). In the last decade there have been further changes which many see as evidence of a capitalist transformation of agriculture in China, despite the persistence the HRS (Zhang, 2015). The various changes that have occurred, depicted by the Chinese state as

advancing ‘socialism with Chinese characteristics’, have all purportedly been carried out in the name of, and under the guidance of, Marxism. But what were Marx’s views on property?

It is widely believed that Marx had an irredeemably negative view of property and of private property in particular. Shlomo Avineri, for example, argues that Marx advocated ‘the abolition of all property relations as such’ (Avineri, 1968, p.109). But this is clearly wrong. Although in the *Communist Manifesto* Marx remarks that ‘the theory of the Communists may be summed up in the single sentence: the abolition of private property’, he had earlier explained that ‘the distinguishing feature of communism is not the abolition of property generally, but the abolition of bourgeois property’ (Marx & Engels, 2010c [1848], p.80). It has alternatively been argued that Marx advocated the replacement of private property by public, state-owned property, a view associated with the belief that he adhered firmly to a deterministic ‘stagist’ view of history in which one mode of production and, therefore, one property regime is superseded (more or less inevitably) by another. From this perspective, there is a relatively closed list of institutional possibilities, each characterised by different property forms - most notably, capitalism, characterised by private property and markets, and socialism/communism, characterised by state-owned property and central planning (Demsetz, 2002). On closer examination, however, it is clear that Marx’s views on property were more complex and nuanced than this.

Although he didn’t analyse property systematically or in detail, and the language that he uses changes somewhat over time and is often elusive and enigmatic, his writings display considerable consistency of view. First and foremost, as Sean Sayers has pointed out, Marx’s analysis of property was ‘characteristically Hegelian’, retaining its Hegelian form even in his mature works (Sayers, 2011, pp.105-115). Hegel’s account of property drew upon two philosophical traditions: natural rights theory and utilitarianism (Hegel, 1991 [1821]). The classic modern expression of the former is, of course, that of John Locke for whom property was a God-given, natural right arising out of man’s labour and self-ownership. All individuals, Locke argued, had a right to ownership over themselves and over whatever they had ‘mixed their labour with’. God may have ‘given the world to men in common’, but when by means of their labour people removed something from its natural state or changed its natural condition (‘put their will into it’), they made it their own (Locke, 1988 [1689], chapter 5). By contrast, utilitarian

thinkers rejected the notion of natural rights as a philosophical fiction. Property, they argued, was a socially created right, a social institution justifiable only when (and because) it performed a social purpose, such as promoting economic prosperity or individual freedom and autonomy. Moreover, for people such as David Hume and Jeremy Bentham private property was neither universal nor ‘natural’: property rights varied according to social conditions. For all their differences, however, both natural rights theorists and utilitarians tend(ed) to operate with an essentially Blackstonian concept of property as ‘sole and despotic dominion’, as entailing more or less exclusive ownership rights over things (Blackstone, 2016 [1776]. Volume 2).

In drawing on these traditions, Hegel recognised not only the economic and legal significance of private property but its ‘spiritual’ role in human life. For Hegel private property was central to individual freedom, self-development and autonomy (Stillman, 1980). ‘It is partly in the process of coming to own things and to be recognised as their owners’, Plamenatz explains, ‘that human beings learn to behave rationally and responsibly’, and to lead ‘an ordered life’. It is partly in the ‘process of learning to distinguish mine from thine that the child comes to recognise itself as a person, as a bearer of rights and duties, as a member of a community with a place of its own inside it’ (Plamenatz, 1975, p.121). For Hegel, therefore, the ‘rational aspect of property’ was to be found ‘not in the satisfaction of needs’, but in the ‘superseding of mere subjectivity of personality. Not until he has property does the person exist as reason’. Indeed, his belief in the centrality of property to human self-development led Hegel to gesture towards the idea that everyone should be guaranteed a basic minimum livelihood, an idea taken up by social reformers later in the century (Hegel, 1991 [1821], §41A, 73, 230, 259–60).

For Hegel, however, although property is essential to human life and is a feature of all human societies, it changes its social form over time (Stillman, 1974). For Hegel, private property is not universal but the end point of a progressive and teleological historical process. Thus, in the earliest societies property took a communal form in which individuals were subsumed within the collective. Over time, however, these forms were superseded by private property which enables individuals to gain autonomy. For Hegel, modern civil society, based on the universal right to private property, represents ‘the fullest development of

individuality and liberty’ - the end point of history (Hegel, 1991 [1821], §46, 77-78, 107).

Marx on the historical development of property

Marx took from Hegel his historical and dialectical approach to property. Like Hegel, he saw property as a universal human phenomenon. ‘All production’, he wrote in *Grundrisse*, ‘is appropriation of nature on the part of an individual within and through a specific form of society. In this sense it is a tautology to say that property (appropriation) [*Eigentum* (*Aneignen*)] is a precondition of production There can be no production and hence no society where some form of property [*Form des Eigentums*] does not exist ...’ (Marx, 1973 [1857-61], pp.87-88). In this context, Marx distinguished possession [*Besitz*], which was as a matter of ‘fact’, from property [*Eigentum*] which was a matter of right, and in the modern world a matter of *legal* right.

Like Hegel, Marx saw property as taking different forms at different times: all forms of property were historical products. Like Hegel, Marx also clearly saw property and property rights as important to individual freedom and autonomy, in part because they entailed recognition of others. He felt, however, that *private* property generated abstract and estranged forms of autonomy and recognition. It represented a right to enjoy and dispose of property without regard to others, and was based not on the association of people but on their separation. In that private property owners were disposed to refrain from interfering with the property of others, they recognised them as ‘others’, but tended to ignore everything else about them. Marx sought ‘truly human and social’ property forms which met the human need for both autonomy and connectedness (Chitty, 2013). This is not to say that Marx did not see the emergence of private property as in certain key respects progressive: his attitude towards it was not as relentlessly negative as many believe (Ellickson, 1993, pp.1317-18). On the contrary, in Marx’s view, private property liberated individual energy and creativity from earlier communal constraints. Thus in *Capital*, in his celebrated account of ‘primitive accumulation’, Marx emphasised the positive role of ‘petty’, small scale, individual private property in unleashing individual energy and creativity from communal constraints and in furthering economic development (Marx, 1961 [1867], Chapter 32). For Marx, it also contributed to the development of human potentialities and individuality. Thus in *Grundrisse* one of Marx’s criticisms of the ‘modern world’ was that in it ‘production appears as the aim of mankind and wealth as the aim of

production', whereas when the 'bourgeois form' was stripped away, what was 'wealth other than the universality of human needs, capacities, pleasures, productive forces etc The absolute working out of [humanity's] creative potentialities' (Marx, 1973 [1857-61], 488). For David McLellan, this is illustrative of a tension in Marx's work between, on the one hand, his obvious enthusiasm for Enlightenment thought, with its emphasis on rationalism, empirical science and material progress; and, on the other, his appreciation of the Romantic tradition, with its cultural critique of capitalist industrialisation and the erosion of the values of solidarity, co-operation and individual development. Marx's understanding of 'progress', McLellan argues, encompassed non-material as well as material human development (McLellan, 2015). Indeed, the contribution of private property not only to economic development but to the development of an enriched and more sensuous 'free individuality' seems to have contributed both to Marx's claim that private property had a 'positive essence' that needed to be retained under communism, and to his later (repeated) assertions about the importance of restoring property to the individual worker (Sayers, 2011, p.116; Arthur, 2004, p.126).

Where Marx and Hegel differed is that while Hegel saw private property as representing the fullest realisation of human freedom and thus as a historical endpoint, for Marx private property was the latest, but not final, stage in the development of property as a social institution. Indeed, Marx saw private property in the means of production not only as a historically specific property form, but as a property form which itself passed through a series of different developmental stages. Thus the individual form of private property, suitable in a society of small-scale individual production, was 'compatible only with a system of production and a society moving within narrow limits': to perpetuate it would be 'to decree universal mediocrity' (Marx 1961 [1867], pp.713-14). For this reason Marx welcomed, at least in certain respects, its supersession by larger '*capitalist private property*' which unleashed unprecedented growth in the productive powers of humanity. It took the 'pressure of capital to awaken the slumbering powers of humanity and promote general industriousness' (Arthur, 1986, p.37). The problem was that although capitalist private property helped to realise human capacities and powers, it did so in alienated ways and would eventually impede, rather than facilitate, further development of the productive forces and of humanity.

This led Marx to anticipate the historical supersession of capitalist private property in the means of production. However, the precise form he saw property taking in his imagined post-capitalist society is less clear. Marx clearly did not, as commonly believed, envisage that communism would entail either the elimination of all property and property rights or the equalisation of private property ownership. He firmly rejected the ‘abstract negation’ of private property, arguing that this would entail the negation of the ‘entire world of culture and civilization [and] regression to the unnatural simplicity of the poor and undemanding man who has not only failed to go beyond private property, but has not yet even reached it’ (Marx, 1970 [1844], p.133-34). Nor did he associate ‘true’ communism with the replacement of capitalist private property by state-owned property. On the contrary, Marx dismissed this idea as ‘crude communism’, arguing that the transformation of private property in the means of production into state-owned or public property merely turned the ‘community’ into a ‘universal capitalist’. This ‘crude communism’ remained ‘captive’ and ‘infected by’ private property (Marx, 1970 [1844], pp.135). In Marx’s vision, communism would see the elimination of ‘bourgeois’ or ‘capitalist’ private property in the means of production and its replacement by ‘socialised property’ which corresponded to what he saw as the increasingly social character of advanced (industrial) production. This entailed the positive supersession, not the abstract negation, of private property. Communism would, apparently, retain and build upon the ‘positive essence’ of private property, recognising its spiritual and ethical value, and ability to unleash human energy and creativity and to foster productive development.

It is here, of course, that the confusion begins, because, as we have seen, while Marx calls for the creation of ‘truly human and social property’ and for ‘socialised’ production and property, he simultaneously calls for the creation of ‘individual property’. Communist society, he argues, ‘does not re-establish private property [*das Privateigentum*] for the producer, but gives him individual property [*das individuelle Eigentum*] based on the acquisition of the capitalist era: i.e., on co-operation and the possession in common [*des Gemeinbesitzes*] of the land and of the means of production’ (Marx, 1961 [1867], p.715). Indeed, as Sayers observes, the restoration of property to the individual worker is a ‘recurrent theme’ in Marx’s work (2011, p.116). Thus when defending the Paris Commune, he argues:

The Commune, they exclaim, intends to abolish property, the basis of all civilization! Yes, gentlemen, the Commune intended to abolish that class-property which makes the labour of the many the wealth of the few It wanted to make individual property a truth by transforming the means of production, land and capital, now chiefly the means of enslaving exploiting labour, into mere instruments of free and associated labour (Marx, 2010a [1871], p.213).

On the face of it, Marx's simultaneous call for 'individual property' and for 'socialised property' in the means of production is indeed 'puzzling' and 'curious' (Sayers, 2011, p.115; Arthur, 2004, p.114). It clearly isn't a call for a return to individual private property in the means of production, but Marx doesn't elaborate on what he means. Can individual and social property be reconciled? Eugen Dühring thought not and mocked Marx accordingly. 'Herr Marx', he wrote, 'remains cheerfully in the nebulous world of his property which is at once both individual and social', leaving it to 'his adepts to solve for themselves this profound dialectical dilemma'. In his view, Marx's attempt to combine individual property with social property was 'Hegelian verbal jugglery'. Responding to Dühring's criticisms, Engels suggested that Marx was drawing a distinction between property in personal possessions, which could be 'individual', and property in the means of production, which would be 'socialised' (quoted in Engels, 1962 [1877], chapter XIII). Marx may well have drawn such a distinction, but there are compelling reasons for thinking that in this specific context he was not doing this. On the contrary, in the relevant passages Marx seems clearly and explicitly to be discussing property in the 'means of production'. 'I suspect', Arthur writes, 'that the ... means of production are indeed referred to under the head of both individual and common property' (2004, p.114). In the post-capitalist society envisaged by Marx, 'individual property' and 'socialised property' would, it seems, co-exist. Unsurprisingly, perhaps, commentators have struggled to reconcile, let alone put flesh on, these rather enigmatic and apparently contradictory ideas (Arthur, 2004, p.114). It is here that the bundles-of-rights theories of property that have been developed since Marx's time might be of help, providing a way of fleshing out and giving more determinate content and meaning to these rather sketchy and seemingly contradictory assertions.

Property theory since Marx: property as a bundle-of-rights

At the time that Marx was writing, property was still generally understood in Blackstonian terms as the ‘sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual’ (Blackstone, 2016 [1766], Volume 2, chapter 1). The prevailing conception of property was, therefore, one in which property was generally seen as describing the relationship between a person and a tangible physical object and often, indeed, as referring to the physical object (‘thing’) itself.

Gradually, however, the conceptual link between property and tangible things loosened. The eighteenth and nineteenth centuries saw the development of an ever more sophisticated credit system and the emergence and growth of ‘a dazzling variety’ of financial wealth in the form of intangible titles to future revenue (Horwitz, 1992, p.150). Originally, these titles to revenue (bonds, shares and the like) were classified in law as *choses in action*, as *in personam* rights, personal rights of action which could only be exercised against a particular person and which could not, therefore, be assigned. As such, they lacked the qualities of property - of the transferable rights *in rem* which seemingly created direct relationships between people and things. Slowly, however, as ever more sophisticated markets for them developed and they became ever more easily transferred, these revenue rights ‘changed their original character’ and became ‘very much less like merely personal rights of action and very much more like rights of property’ (Holdsworth, 1966 [1937], p.543; see also Ireland, 1996; Ireland et al, 1987). The result was that the old conception of property as ‘sole and despotic dominion’ over tangible things became increasingly problematic. By the end of the century, some of the most important forms of property were intangible. In response, the concept of property was gradually re-defined to embrace not merely tangible objects but any rights with exchange value. Over time, this generated a re-appraisal of the legal nature of property and the emergence of the idea that it was a ‘bundle-of-rights’ (Banner, 2011, chapter 3). In this respect, the early twentieth century American legal theorist, Wesley Hohfeld, was a key figure.

Hohfeld questioned the long established legal dichotomy between rights *in rem* and rights *in personam*, between property rights (rights to things) and contractual and obligatory rights (personal rights against persons). What we loosely refer to as ‘rights’, Hohfeld argued, were in fact a number of distinct legal capacities or entitlements, which he broke down into a series of dyads: right-duty; privilege-

no right; power-liability; immunity-disability. On this basis he developed a complex typology of ‘jural opposites’ and ‘jural correlatives’ in which each legal capacity of a rights holder was defined by a corresponding non-capacity among non-rights holders. Hohfeld then applied this typology to a range of legal relations, including the rights *in rem* which had been traditionally understood as ‘property’ rights, arguing that these too were in fact complex bundles of rights, privileges, powers and immunities. It followed that, properly conceptualised, property rights were not rights to things but were, rather, rights against persons: all rights to and over tangible things entailed a duty owed by someone else to the rights-holder which the state would enforce. According to Hohfeld, therefore, the traditional distinction between rights *in rem* and rights *in personam* had been incorrectly drawn. In his account, the distinction between them was one not of subject-matter but of scope. What distinguished them was the number of persons affected. Rights *in personam* were rights held by someone against one person or a few definite persons and were, therefore, ‘paucital’. Property rights or rights *in rem* were held against the world at large and were, therefore, ‘multital’. It was the extent of the jural relations that they entailed that distinguished them, not their association with some object of ownership (Hohfeld, 1913, 1917).

Conceptually, this had radical implications, for in blurring the lines between rights *in rem* and rights *in personam*, Hohfeld also blurred the lines traditionally drawn between property and contract. Moreover, it followed from Hohfeld’s analysis that rights *in rem* established not vertical relationships between people and things but a series of horizontal relationships among people, in which each capacity in the owner’s entire bundle of rights imposed a correlative incapacity on non-owners. Property didn’t describe any *res*, any physical object at all; it was simply a bundle of legal entitlements and relations (Hohfeld, 1913, 1917). Property rights were, therefore, at root, *social relations*, a myriad of legally constituted, personal rights between individuals underwritten by the state. This idea remains widely held amongst lawyers (Singer, 2000). It also, of course, echoes Marx’s insistence that both capital and property are not things but social relations. For Marx the Lockean idea that the development of private property under capitalism was the result of an individual will asserted over things was a ‘juridical illusion’ (Sayers, 2011, p.111).

In the legal world, Hohfeld’s work has also come to be associated with the idea that property is composed not of a single right over a thing but of a ‘bundle-of-

rights' held against other people; that it is a complex compound of Hohfeldian relations. In the 1960s, the Oxford legal theorist, A M Honoré, adopted a similar approach to analyse the concept of 'ownership', disaggregating the eleven 'standard incidents of ownership': the rights to possess, to use, to manage, to the income, to the capital, to security, to transmit/alienate, and so on. Something resembling Blackstone's 'sole and despotic dominion' occurs only when (more or less) all eleven sticks, (more or less) undivided and unabridged, are bound together in a state of 'full liberal' or 'individual ownership'. In reality, as Honoré and many others before and since have pointed out, there are nearly always restrictions on the length of some of the metaphorical sticks in the bundle: the right to use, for example, is commonly subject to legal constraints. In other cases, some of the sticks possessed by a rights holder are missing altogether; in still others, ownership is split and the sticks (or even the rights deriving from a single stick) divided between different persons, with the result that there are multiple persons with separate 'proprietary' entitlements to the same object of property. The possibilities are endless, reflecting the enormous complexity of actual property entitlements in law. As Honoré observed, use of the terms 'owner' and 'ownership' is often 'extend[ed] to cases in which not all the [standard] incidents are present'. This, he suggests, is reasonable when enough of the rights in the full liberal ownership bundle have been joined, but there comes a point where the bundle is so attenuated they simply aren't meaningful or appropriate descriptors (Honoré, 1961).

Although the 'bundle-of-rights' view of property has become something of an orthodoxy amongst legal scholars and theorists, it is not without its critics. It not only underlines the intricate, contingent, eminently changeable nature of property and property rights, and their inherently social relational nature, but reminds us of the blurry lines dividing property and contract/obligation (Worthington, 2007). It also highlights that 'property in physical, finite, non-shareable resources is inherently rivalrous': extending property rights and protection to one person inevitably means denying the same rights to others (Underkuffler, 1996, 2015). In other words, bundle-of-rights theories underline the fact that property rights are contestable legal and political constructs which can be constituted in many different ways with different effects and consequences. Understandably, this discomforts some supporters of contemporary neoliberal capitalism who would like to see more things 'privatized' and the adoption of a stronger, more 'essentialist', unitary conception of property as (more or less) exclusive and

exclusionary possession of all eleven of Honoré's incidents, subject to minimal restrictions and state regulation. This has led some to reassert an idea of property as 'the law of things' (Smith, 2012; Merrill & Smith, 2001).

Marx's insistence that capital is a social relation and his observation in *Grundrisse* that the concept of private property 'presupposes an antithetical form, non-property' have clear Hohfeldian overtones (Marx, 1973 [1857-61], pp.87-88; see also Cui, 1998, p.77). Crucially, by highlighting the many different ways property rights in the means of production can be constructed and allocated, bundle-of-rights theories suggest that it might indeed be possible to construct property rights structures which combine notions of 'individual property' with notions of 'socialised property'. Thus, as we have seen, Marx deployed a number of different concepts when he was writing about property. Many of these are present in Chapter 32 of *Capital*: 'individual private property'; 'capitalist' or 'capitalistic private property'; 'individual property'; 'socialised property'. When Marx refers to 'individual *private* property' and 'capitalist *private* property', he seems to be deploying a Blackstonian conception of property as 'sole and despotic dominion' - the possession by individuals or productive entities of something close to Honoré's full liberal ownership rights in the means of production. In similar vein, his rejection of 'crude communism' is rooted in his opposition to full liberal (private property) ownership by the state. The transformation of private ownership into state ownership, he suggests, merely turns the 'community' into a 'universal capitalist' and achieves only a partial and abstract negation of private property. It merely changes the identity of the full liberal owner; it still entails property-less workers (Marx, 1961, chapter 32). This opposition to the possession of full liberal ownership rights in the means of production, whether by capitalists or the state, does not, however, represent opposition to all property and property rights, merely opposition to particular property rights structures.

What the bundles-of-rights conception of property makes clear is that there is no reason why property regimes have to be based on full liberal ownership of the means of production; why all the rights in the property bundle have to be concentrated, undiluted, in one person or entity. As Honoré shows, the various sticks in the bundle can not only be shortened and restricted, but split and allocated to different persons. Some of these 'persons' might be individual human beings, some of them collective or corporate bodies. In this sense, therefore, it is

perfectly possible to create ‘individual property’ alongside ‘socialized property’; to create individual property rights within a broadly social or collectivist property framework. It is also, of course, perfectly possible to have social formations with a range of different property regimes for different resources.

The Joint stock company and the ‘dissolution of the atom of property’

Indeed, Marx clearly thought that there were already forces at work within capitalism that were splitting ownership in the means of production. He lived long enough to witness the early stages of the processes whereby economies dominated by a large number of small, family-owned firms were replaced by economies dominated by a small number of large, impersonal joint stock companies (JSCs), the precursors to today’s large public corporations. In JSCs, Marx argued, the means of production cease to take the form of individual private property: ‘private capital’ is replaced by ‘social capital (the capital of directly associated individuals)’. JSCs thus take the form of ‘social undertakings’ rather than ‘private undertakings’. This is reflected, *inter alia*, in the changing nature and status of JSC shareholding. In the JSC, he wrote, ‘the actually functioning capitalist’ is ‘transform[ed] ... into a mere manager, [an] administrator of other people’s capital’ and ‘the owner of capital’ transformed into ‘a mere owner, a mere money-capitalist’, who received a return in the form (if not at the level) of interest, ‘as mere compensation for owning capital’. For Marx, JSCs marked the ‘abolition of capital as private property’ and the ‘abolition of the capitalist mode of production within the capitalist mode of production itself’. Although they didn’t represent the actual socialisation of production, they were a ‘necessary point of transition towards the transformation of capital back into the property of the producers’, though ‘no longer as the private property of individual producers but rather as their property as associated producers, as directly social property’ (Marx, 1971 [1894], pp.435-441).

Half a century later Adolf Berle and Gardiner Means described the same processes, arguing that the rise of the joint stock corporation had dissolved the ‘atom of property’ (Berle & Means, 1968 [1932], p.8). By then, JSCs had grown in number and size, a sophisticated market for their shares had developed, and ‘the company’ as a separate legal entity, rather than the shareholders, had come to be seen as the owner of the tangible assets. Shareholders now owned shares, quite separate pieces of intangible property in the form of rights to profit. They had, moreover, relinquished most of the rights traditionally associated with

‘ownership’ to managers. For Berle and Means, these changes had ‘dissolved the property atom’ and ‘destroy[ed] the very foundations on which the economic order of the past three centuries ha[d] rested’. For Adam Smith and his followers, they argued, ‘private property was a unity’, involving, amongst other things, possession. The JSC had dissolved that unity; the various rights in the (full liberal) ownership bundle now ‘attach[ed] to different individuals’ and with this ‘private property in the instruments of production [had] disappear[ed]’. There were now two forms of ‘property’, one *active* – the rights over the tangible assets owned by the corporation; the other *passive* – the shares, the attenuated bundle of rights held by the shareholders. Having relinquished most of the rights in the ‘ownership’ bundle, shareholders looked less like ‘owners’ and more like creditors; and the modern corporation looked less like a private enterprise and more like a social or quasi-social institution (Berle & Means, 1968 [1932], pp.8-9, 303-313).

In ‘bundles-of-rights’ terms, in JSCs the rights making up (full liberal) ownership of the means of production have been split and re-distributed, with only a few of them remaining in the hands of shareholders. Shareholders – money capitalist *rentiers* whose interest is almost always entirely financial – have retained their residual control rights and their right to the corporate surpluses, but given up most of the other rights traditionally associated with ‘ownership’ (Ireland, 1999). Although the language he uses is different, Marx’s comments reflect an intuitive grasp of these processes. Indeed, in the decades before and after the Second World War, with shareholders dispersed and relatively disempowered and labour relatively strong, there was reason for believing that the rise of the JSC was, as Marx predicted, slowly generating more ‘socialised’ forms of production. However, the rights structures themselves were never socialised: despite their creditor-like character, shareholders retained their exclusive control rights. This has proved significant, for in recent decades, having re-concentrated in institutions, previously-dispersed shareholders, operating in financial markets, have been able to use their residual control rights to reassert their power in and over corporations (Ireland, 2009, 2016).

Splitting ownership: the Chinese Household Responsibility System

As Honoré observed, examples of splitting the ‘property atom’ abound in empirical reality: property rights can be, and often are, disaggregated (Singer, 2000). At one level, therefore, the household responsibility system (HRS) is just another example of a widespread phenomenon. It is, however, not only an

unusually complex and radical one, not least because of its collective dimensions, but one which has been remarkably successful in restoring dignity and autonomy to rural households and in generating growth and alleviating poverty – despite flagrantly violating the precepts for successful development laid down by many modern (neoliberal) theorists and policymakers (North, 2005).

Some locate the origins of the HRS as far back as the mid-late 1950s (Zhang, 2010), but the rise of the HRS in its modern form is usually traced back to a grass-roots ‘practical experiment’ in Anhui Province in the late 1970s (Wu, 2016, p.1), which was embraced by local officials and then, in 1981, by Deng Xiao Ping and the central state. It is estimated that by the mid-1980s the HRS encompassed about 95% of Chinese households. Its rise coincided with dramatic increases in agricultural output and equally dramatic improvements to the livelihoods of millions of Chinese farmers: between 1979 and 1984, rural net income per capita grew by 11% annually (Wong, 2014, pp.14-15). What made the HRS so effective? We aren’t able here to analyse the HRS in detail (see Meng, 2016b), but using Honoré’s eleven incidents of ownership as an analytical aid, it is possible to identify its key features and the roots of its success.

China has adopted a ‘unique dual-track land ownership system’ which establishes different property rights regimes in urban and rural land. Under Articles 9 and 10 of the 1982 Constitution of the People’s Republic urban land (land in cities) is owned by the state, while rural and suburban land is owned by regional and local collectives. This differentiation has survived four revisions of the Constitution (in 1988, 1993, 1999 and 2004) and has been confirmed by other laws such as the Land Administrative Law (1986), the Revised Land Administrative Law (1999) and the Property Rights Law (2007). Under the HRS, however, a two-tier property rights structure has been enshrined in which some of the rights in rural land ownership bundle are vested in collective bodies, thereby retaining key elements of ‘socialist public ownership’, while others are vested in individual peasant households. Crucially, under the HRS the rights to possess, use and manage are held by peasant farmers, albeit on a time-limited basis and subject to a state-imposed restriction dictating that rural land must be used for agricultural purposes. Initially, these use-rights were allocated for a period of five years, but this was extended to 15 years in 1984 and to 30 years in 1993 (Zhu & Jiang, 1991, p. 446; Cheng & Tang, 1995/1996, p.44). Both the Land Administration Law (1999) and the Rural Contract Law (2003) have confirmed the duration of rural

land leases as 30 years, as did the Property Law of 2007. In Honoré's terms, the Chinese legal system provides peasants with 'determinate interests'. When their leases terminate, the rights revert once more to the collective, which can re-allocate them, either to the previous tenant or to other members of the village. The allocation to households of the right to manage – the right to 'decide how and by whom the thing owned shall be used' - has been particularly significant, for it has enabled peasants to make their own decisions about production and land use management, and to adjust their crop patterns in response to soil, temperature, rainfall and other region-specific differences (Lardy, 1983). More controversial has been the illegal development of rural land for non-agricultural uses such as house-building. This has led to the emergence of so-called 'small' or 'minor' property rights, valuable but of uncertain legal status (Qiao, 2015).

The HRS also gives households what Honoré calls income rights, a concept which encompasses the 'fruits, rents, profits' and other benefits derived from the right to use. Under Maoist collectivization, the basic production and accounting unit was the production team and distribution was not directly linked to work performance. By contrast, under the HRS households are allocated income rights. Initially, they were split with the collective, with households returning a specified percentage of their output back to the collective but retaining any output (or the proceeds from it) exceeding this quota. In 1994, however, the quota requirement was abolished and the right to income vested entirely in individual producers, who are now entitled to any benefits (income, rents, profits etc.) derived from the use rights they possess once they have met their obligations to the state and the collective (agricultural taxes, village community charges etc) (Zhu & Jiang, 1993; Qi, 1999, p.20). Some see this as one of the springboards of Chinese rural economic growth. It has certainly 'greatly benefited rural families' (Joel, 2012, p.134): even if they decide to sublet their land, rent-receiving households are usually able to avoid complete poverty and destitution when they suffer temporary or long-term job loss as migrant workers (Zhang & Donaldson, 2013, p.270).

Households have also acquired 'transmissibility' rights, the ability to bequeath their interests to successors. Thus, the time-limited rights of use, possession, management and income held by peasants can be inherited by their successors, though only for the duration of the contract period. Peasants have also begun gradually to acquire rights to transfer their use-rights. In 1988 constitutional

revisions confirmed that land use rights could “transferred according to law”, and article 128 of the Property Law (2007) formally permits subcontracting, although this power remains subject to important constraints: under the rules of the Rural Contracting Law (2003) the transfer must be ‘a voluntary, consultative and paid lease’, the land must still be used for agricultural purposes, and the terms of lease must not exceed 30 years. As the periods over which use-rights are granted to households have lengthened, these rights of transmission have become increasingly important and valuable.

Households have not, however, been allocated Honoré’s right to the capital – ‘the power to alienate the thing and the liberty to consume, waste, or destroy the whole or part of it’. In China not only is there an obligation to use land ‘rationally’ (which would seem to exclude the liberty to destroy), the right to sell and alienate is unambiguously in the hands of collective bodies (Hodgson & Huang, 2013, p. 611). Under Article 10 of the 2004 Constitution, ‘no organization or individual may appropriate, buy, sell, or otherwise engage in the transfer of land by unlawful means’, and according to the NPC Legal Affairs Work Committee, the right to the proceeds from the sale of land ‘belongs to the central people’s government and ... the State Council may decide the distribution of profits from state-owned land’ (RFGW, 1998).

The household’s right to security - the right to be ‘able to look forward to remaining owner indefinitely’ - is also curtailed. As in most property regimes, the Chinese state can expropriate land in order to construct roads, railways and the like, as long as it follows certain procedures and provides ‘reasonable compensation’ and ‘appropriate resettlement’ (Wong, 2014, p.21). The state can also convert rural land into urban land. As Honoré says, in principle, ‘a general right to security, availing against others, is perfectly consistent with the existence of a power to expropriate or divest in the state or public authorities’. In this sense, ‘ownership has never been absolute’; it has always had ‘a social aspect’, usually ‘expressed in ... the prohibition of harmful use, liability to execution for debt, to taxation, and to expropriation by the public authority’ (Honoré, 1961, pp.120, 145-46). In China, however, questions have arisen about the way in which land expropriations are conducted. There have been numerous incidents of fraud and abuse in which Chinese peasants have been denied fair compensation: there is a gap between the law-in-the-books and the law-in-practice, between the practical

operation of the legal system and the formal rights structures (Wong, 2014; Hodgson & Huang, 2013).

Under the HRS, then, within a framework in which key land ownership rights remain vested in collectives, many of the rights associated with ownership – the right to use, to possess, to manage, to the income and so on – have been allocated to individual households for specified time periods and subject to various restrictions. When the various time-limited rights awarded to households terminate, they revert to the collective, which retains what Honoré calls a ‘residuary right in the things owned’. This is significant not least because many see the possessors of these residual rights as the ‘owners’, hence the continuing depiction in China of collectives as ‘landowners’. In Honoré’s terms, however, the HRS is an example of ‘split ownership’ in which the eleven standard incidents are divided and sub-divided between individual households and collectives, and where the ‘ultimate residuary right is not coupled with present alienability or with the other standard incidents’. This renders the ‘location of ownership’ a ‘puzzle’. Indeed, as Qiao and Upham suggest, asking ‘who owns China’s land’ is actually rather unhelpful and misleading (Qiao & Upham, 2015, p.2495).

Crucially, the HRS is widely credited with generating huge increases in agricultural productivity. By separating and dividing the rights in the ownership bundle and allocating, with restrictions, key ownership rights to individual farming households, the HRS has provided individual farmers with incentives to increase productivity within a broad framework of collective land ‘ownership’ (Kung, 2002). Indeed, it was precisely the HRS’s startling success in this regard – as well as its enhancement of individual autonomy and dignity – that led the Chinese leadership to embrace and preserve it. In 2007, after a lengthy and heated thirteen year debate, the Chinese state endorsed the HRS in its first comprehensive Property Law, despite being placed under intense pressure – both from within and without – to privatize rural land and adopt a system of full liberal land ownership (Wong, 2014, pp.19-22).

None of this is to say that the HRS does not have limitations. Quite apart from the problem of unjust expropriations, it threatens to perpetuate small-scale production and to discourage long-term investments by producers (Zhu & Jiang, 1993). The lengthening of the use-rights allocations to households to thirty years and relaxation of the rules on transfers by households were responses to these

problems, reminding us that property rights structures can be subjected to regular review. Indeed, in China official changes to legal rights often follow *de facto*, ‘on-the-ground’ changes in actual practices. This has been apparent in the emergence of what have been called ‘small’ or ‘minor’ property rights of uncertain legal status (Qiao & Upham, 2015, pp.2487-89), particularly in the context of urban housing (Kan 2012). Nor is any of this to say that the HRS doesn’t contain anti-collectivist tendencies, which some would like to encourage and others to contain. What it is to say is that the HRS highlights the complexity of property and property rights structures and the range of possibility: the choice is not simply between alternative systems of full liberal ownership, whether private or public. It is possible to devise property rights structures that reconcile, in Various ways, the individual and the social – Hegel’s the universal and the particular (Chitty, 2009) – and to construct structures that retain the ‘positive essence’ of private property within a broadly collectivist framework.

The changing nature of the HRS

The introduction of the HRS was criticised from across the political spectrum, but building on the often under-appreciated foundations created by Maoist collectivism (Lin, 2013, p.46-48; Xu, 2013, 2015), its empowerment of peasant producers and the incentives it created are now widely credited with helping to bring hundreds of millions of poor farmers out of poverty and generating ‘the fastest rate of rural poverty reduction in human history’ (Donaldson & Zhang, 2015, p.52). However, it not only marked a shift away from collectivism and planning towards a more market-oriented system, it re-directed Chinese agriculture back towards more small-scale, household-based production. By the mid-1990s the Chinese government was trying to modernise and up-scale production beyond the boundaries of the household. This had been anticipated by Deng Xiaoping when he argued that the development of Chinese agriculture was going to require ‘two great leaps’. The first involved the dismantling of the peoples’ communes and introduction of the HRS - ‘a great advance which should be kept in the long term’; the second involved ‘meeting the needs of scientific agriculture and socialized production’, and ‘properly developing scaled-up operation’. This, Deng noted, would require ‘collectivising the rural economy and coordinating agricultural modernisation’, something which would be ‘impossible’ if each household carried on working on its own (Donaldson & Zhang, 2015, p.54).

As Donaldson and Zhang observe, the two leaps seem to involve moving in different directions: de-collectivisation ‘sets agriculture back to household-based, small-holding operations’; re-collectivisation and scaling-up involve moving ‘beyond the household boundaries’ (Donaldson & Zhang, 2015, p.54). Moreover, the second stage seems to demand not only investment in new technologies but an enhanced division of labour, greater productive specialisation, and a move from production oriented primarily towards subsistence (with only the surplus product being marketed) to specialised production oriented primarily towards exchange. This creates a series of challenges. Societies seeking to build positively on the technological achievements of capitalism and the division of labour have to develop not only property rights regimes that reconcile the individual and the social, but organisational forms, ways of investing in modern technologies, mechanisms for up-scaling and co-ordinating the operations of specialised productive units, and for exchanging and distributing goods (and surpluses) which do likewise.

We do not have the space here to discuss in any detail the developments that have taken place in Chinese agriculture in recent years. It is clear, however, that different institutional approaches to modernisation and up-scaling, and to vertical integration and co-ordination were available to, and at different times promoted by, the Chinese state. Choices had to be made between collective and private modes of investment; between different ways of achieving vertical integration; between different forms of collective control and oversight; between ‘dragon-head’ agribusiness producers, independent household producers and co-operatives (which can themselves take many different forms); and between planning and ‘free’ market co-ordination and variants thereof. In recent years the Chinese state has actively promoted institutional routes and arrangements that have facilitated the penetration of capital into the Chinese countryside and fostered the emergence of ever greater market co-ordination. It has shifted its support from peasants to agribusiness, encouraged commercial companies to get directly involved in farming, sought to develop corporate supply chains, and facilitated contract farming and land transfers to create larger farms (Against the Grain, Oct 2015).

It didn’t have to be this way: different institutional arrangements could have been encouraged and fostered. The Chinese state has favoured these particular routes because of a changed approach to food security (moving away from self-

sufficiency), a prioritization above all else of rapid growth and, in some quarters, a belief that Chinese agriculture had, as a matter of historical necessity, to pass through capitalism to get to socialism. Whatever the reasons, there is no doubt that agriculture has emerged as an important new site for profit making and capital accumulation and that the changes have contributed to growing commodification, to new forms of inequality and class stratification, to the emergence of what some have called a ‘semi-proletarian’ workforce, and to the private appropriation of surpluses (Gurel, 2014). It is, therefore, easy to see why some commentators are arguing that Chinese agriculture is either already predominantly capitalist in nature or rapidly being ‘subsumed by capitalism’ (Chuang, 2015). However, the changes which have occurred have not yet generated ‘pure’ capitalist relations or a ‘purely’ capitalist dynamic. There remains considerable institutional complexity, ‘many different local models’, a ‘multiplicity of local patterns’ and a variety of economic and social dynamics and trajectories (Zhang, 2013; see also Gurel, 2014, p.70). Many, like Zhang, see these as ‘modes of an agrarian transition’ to capitalism, though he is anxious to stress that they are not different stages in the same developmental trajectory towards a uniform capitalist agriculture’ (Zhang, 2013, p.10). Others, however, see these complexities as evidence that China has not (yet) ‘taken the capitalist road’, though they are well aware that there are pressures, internal and external, pushing in that direction (Amin, 2013; see also Cui, 1998).

One of the major barriers to the emergence of a fully-fledged capitalist dynamic is, of course, the persistence of household land-use rights. While these have not prevented the penetration of capital into agricultural production, not least through the mechanisms of credit and trade, they have acted as a brake on the emergence of a mass of completely property-less wage labourers and the development of a fully capitalist dynamic. Moreover, they have been consistently endorsed by the Chinese state and supported by the peasantry. So, while there is no doubt that the Chinese government has been actively facilitating and promoting the transfer of land-use rights by encouraging the specialised, vertically integrated production of export commodities and by entering free trade and investment agreements which oblige the removal of barriers to foreign investment – and while there is no doubt that these use rights are now increasingly being transferred to corporate entities, a development which has recently being accelerated by the emergence of land circulation trusts (Against the Grain, April 2015) - land is still not yet fully privatized and commodified (Ye, 2015; Amin, 2013). The persistence of land use

rights has restricted the ability of agribusiness companies completely to dispossess farmers of their access to land and provided farmers with a source of income and bargaining power. Moreover, some commentators continue vigorously to defend the system of ‘collective land ownership and individualized land use rights’, arguing that it has not only ‘protect[ed] agricultural producers to various degrees against the domination, exploitation and dispossession by outside capital’, but shown itself to be ‘adaptable [and] conducive to development of rural markets and agricultural modernisation’. It has, they argue, simultaneously allowed land rental markets rapidly to develop, facilitating the ‘circulation of land and consolidation of parcellized land into larger operations’, and has helped agricultural modernization in China to proceed in more equitable ways than elsewhere, notwithstanding the growing encroachments of capital. China does not yet have an expanding army of landless vagabonds (Donaldson & Zhang, 2015 pp.68-71; Huang et al, 2012). The result has been the emergence of complex and varying institutional arrangements with different sets of ‘rules of reproduction’ for producers (Brenner, 1986). This underpins the difficulties commentators encounter trying to fit contemporary Chinese agriculture unequivocally and decisively into the ‘capitalist’ category, though that may be its direction of travel. The Chinese experience vividly illustrates that different institutional arrangements – different property rights structures, productive institutions, and modes of investment and co-ordination - generate different economic and social dynamics, different values and mentalities, and different sorts of conflicts (Gurel, 2014).

Making History

In many ways, as various commentators have observed, having defeated much of the opposition, capital(ism) is now overdosing on itself. Polanyi’s ‘fictitious commodities’ – labour, land and money – have increasingly become subsumed under Marx’s logic of capital accumulation and, with the erosion of the institutional safeguards protecting them from the full effects of commodification, have all become crisis zones. Accumulation seems to be reaching its limits, and there are few signs that our elites and technicians know how to get the system functioning smoothly again – economically, politically or socially. This has led Streeck to argue that we need to see capitalism ‘as a historical phenomenon, one that has not just a beginning, but also an end’, and to recognise that this end ‘is already under way’. We also, he says, need to shed the ‘prejudice that ‘capitalism as a historical epoch will end only when a new, better society is in sight’, and to

learn ‘to think about capitalism coming to an end without assuming responsibility for answering the question of what one proposes to put in its place’. It is not the job of social scientists ‘to make people feel good ... [but] to speak the truth’ (Streeck, 2015). One key truth that needs to be spoken is that the range of institutional possibility is far greater than that between a more or less ‘pure’ capitalism - a (neoliberal) regime based on full liberal ownership of the means of production by private individuals or entities and generalised and open markets - and socialism or communism, understood (as it usually is) as a regime characterised by full liberal ownership of the means of production by the state coupled with central planning (Unger, 2009). With this in mind, it is worth returning to the Marx puzzle and his enigmatic comments about property in a post-capitalist society.

As we have seen, Marx believed that that the appropriation (*Aneignen*) of nature and therefore ‘property (*das Eigentum*)’ was ‘a precondition of production’. There could, he argued, be ‘no production and hence no society where some form of property (*Form des Eigentums*) d[id] not exist’ (Marx, 1973 [1857-61], pp.87-88). In the conceptual universe of modern property theory, all societies have to delineate and allocate the rights in the property bundle over different resources. In his imagined post-capitalist society, Marx envisaged a property regime in which ‘individual’ and ‘social’ property rights in the means of production would co-exist. Although he did not elaborate on what such a regime might look like, let alone provide a detailed institutional picture, he was pretty explicit about the features of capitalism that needed to be overcome: production governed by the law of value, alienation, and exploitation and oppression. For Marx, the law of value was specific to capitalism and operated only when all inputs and outputs had been commodified and monetized, subjecting production to market forces (including the need to exploit labour) which confronted producers as ‘external coercive laws’ (Weeks, 1982). He wanted a decisive break with such a world, in which the products of human activity confronted people as inexorable non-human forces. He was, therefore, vehemently opposed to *capitalist* markets, to what Ellen Wood calls ‘the market as *imperative*’. His views of what she calls the ‘market as opportunity’ are less clear, though he was aware that, historically, not all markets were capitalist. What he sought was the construction of a world in which people exercised conscious mastery over the institutions within which they lived their lives. He thus envisaged a world in which they were engaged in a process of self-making, in which social relations were transparent, participatory

and democratic, and in which human beings were able fully to exploit the productive technologies they had created in furtherance of human freedom and potential. While these aspirations did not provide him with a blueprint, they did provide a set of guiding principles.

As Kevin Anderson and others have pointed out, Marx gradually developed a much more contingent sense of historical unfolding, moving away from the rather (uni)linear, teleological, staged, deterministic and Eurocentric view of historical development that coloured his earlier work. He began instead to develop ‘a multilinear and non-reductionist theory of history’, analysing the ‘complexities and differences of non-Western societies’ and ‘refus[ing] to bind himself to a single model of development or revolution’ (Anderson, 2014, p.237). In the last French and German editions of *Capital* that he edited, and in later correspondence, Marx asserted that the transition outlined in the chapters on primitive accumulation applied only to Western Europe, opening up what Anderson calls ‘multilinear pathways of social development’ (Anderson, 2014, p.241). He no longer, for example, seems to have considered the capitalist privatization of communal land a pre-requisite of progress towards socialism/communism, revising his earlier view that the destruction of peasant communes by capitalism was progressive, and coming to see Russian peasant communal landownership as a possible ‘point of departure for a communist development’ (Anderson, 2014, p.235). The implication was that capitalism might not be a necessary stage for the development of socialism.

The greater openness of the later Marx’s vision of the future accounts in part for his unwillingness to produce anything resembling a detailed picture of what a post-capitalist society would look like. As Hudis says, he provided ‘little or no discussion of the institutional forms’ of a post-capitalist society, other than to speak positively about workers co-operatives and ‘free association’ (Hudis, 2013, pp.114, 177, 190; see also Berki, 1983, p.15). This is reflected in the many different descriptors he attached to post-capitalist society: ‘socialism’, ‘communism’, ‘mode of production of associated producers’, society of ‘free individuality’ and so on (see Hudis, 2013, pp.114,177,190). Indeed, not only was he steadfast in his refusal to engage in detailed talk about the future, he was highly critical of visions which emerged not from the material possibilities of the present but from the heads of theoreticians (Hudis, 2013, p.84).

In this context, as many have observed, the Paris Commune, short-lived though it was, seems to have played ‘a pivotal role’, re-shaping some of Marx’s ideas and altering the trajectory of his thought (Ross, 2016, pp.77-89); see also Harvey, 2000, pp.174-77). Amongst other things, it led him to argue that ‘the working class cannot simply lay hold of the ready-made state machinery and wield it for its own purposes’ (2010a [1871], p.206). This seems to have been a reflection of his growing recognition that social transformation was unlikely successfully to be realised by a top-down statist imposition of a theoretically-derived, predetermined set of institutions. ‘The working class’, he wrote, ‘did not expect miracles from the Commune [and had] no ready-made utopias to introduce *par décret du peuple*’. They knew ‘that in order to work out their own emancipation ... they w[ould] have to pass through long struggles, through a series of historic processes, transforming circumstances and men’ (2010a [1871], p.213). As he had argued in the *Economic and Philosophic Manuscripts*, the resolution of the theoretical antitheses between such things as ‘lack of property and property’ was ‘only possible in a practical way’. It was ‘by no means merely a problem of understanding, but a real problem of life’ to be resolved in practice (1970 [1844]). What most impressed him about the Commune was precisely ‘its own working existence’ (2010a [1871], pp.217, 252, 261). This implies that the institutional structures of post-capitalist societies are likely to emerge in significant part from the engagements of ordinary people with existing institutions and practices, and from practical experimentation with alternatives (Unger, 1987; Cui, 1998). Inevitably, this makes it very difficult to put detailed institutional flesh on any post-capitalist vision. The emphasis is, rather, on people ‘making history’, one step at a time.

And that, of course, was precisely what members of the Chinese peasantry were doing when, in search of practical solutions to real-world problems, they devised the HRS, a set of institutional arrangements it is hard to imagine being conceived by theorists. Indeed, many still see this instance of imaginative agency as an anomalous, impure muddle. But it has proved itself in reality, working well at both the material and spiritual levels. Having begun life as a grass-roots experiment by a group of 20 or so households seeking to resolve practical problems - and doing so collectively rather than as isolated individuals operating in impersonal markets – the HRS evolved in both a bottom-up and a top-down way. The property regime devised by these households was endorsed by local officials and eventually embraced and promoted by the central state as national

policy. Its rise was, therefore, the result of a series of complex interactions between peasants, local collective agencies and the central authorities. Indeed, its success underlines the importance of recognising that state, law and ‘experts’ are not the only engines of property rights reform and that legal development sometimes follows social practice (Qiao & Upham, 2015, 2487-89). It also shows that it is possible to reconcile the decentralization implied by ‘free association’ and ‘individual property’ in the means of production with the collective planning that seems to be demanded by the development of the forces of production and growing division of labour. This is significant, for in a world with ever more robots and automation, and greater abundance from less work, a certain amount of collective planning seems inevitable if labour and resources are to be allocated in a way that meets human needs and prevents social and political disintegration.

Some Concluding Reflections

There may be other important lessons here. Truly radical change is likely to generate social practices and arrangements that are so different from our own that they are not only hard to imagine but incapable of being captured by existing conceptual categories. ‘Since we can speak of what transcends the present only in the language of the present’, Terry Eagleton explains, ‘we risk cancelling out our imaginings in the very act of articulating them. The only real otherness would be that which we could not articulate at all’ (Eagleton, 2000, p.53). Or as Unger puts it, we are permanently in danger of being ‘helpless puppets of the institutional and imaginative worlds we inhabit’ (Unger DH 204). This is the problem that confronts those who, like Marx, try both to emphasise how different the future could (will) be while at the same time trying to provide some idea of what a post-capitalist society and its property relations might (or ought to) look like. Indeed Berki goes as far as to suggest that perhaps ‘Marx actually wanted to convey the message that communism was essentially unintelligible’; that it simply couldn’t ‘be adequately captured in terms of existing language’ (1983, p.17).

But, as David Harvey says, those seeking transformative change can’t really do without some vision, however incomplete and partial, of the sort of alternative form of social life they would like to establish, if only to clarify the desired direction of travel (Harvey, 2000, p.188). And constrained though he was by the categories and language of his time and the problem of inexpressibility, Marx offered not only some guiding principles but some ‘visionary pronouncements

concerning the different quality of communist society’ which he cast in ‘extremely vivid, evocative language’ (Berki, 1983, p.15). In *The Critique of the Gotha Program*, for example, he imagines ‘the higher phase of communist society’, in which the division of labour and its subordination of the individual has been transcended; in which the development of the productive forces have seen ‘the springs of co-operative wealth flow more abundantly’, enabling the ‘narrow horizon of bourgeois right’ to be ‘wholly cross[ed]’; and in which ‘the material conditions of production’ are the ‘co-operative property of the workers themselves’. This is a society that ‘inscribes on its banners: From each according to his ability, to each according to his needs’ (Marx, 2010b [1875], pp. 347-48); Thomas, 2008, p.146). It is also a society of ‘truly human and social property’ in which ‘individual property’ and ‘socialised property’ in the means of production co-exist, and whose property rights structures promote both individual autonomy and social connection (Chitty, 2013). It is a society in which the economy is ‘embedded’ (Polanyi, 2002 [1944]).

In this context, the HRS provides a valuable material referent – a real working example which effects a reconciliation of the individual and the social in the means of production. We don’t wish to idealise the HRS, nor underestimate the extent to which it is rooted in Chinese culture and history and in a wider set of institutional arrangements, but its success does show that by dividing, subdividing and allocating the rights in the property bundle it is possible to harness individual property’s ability to promote human dignity and autonomy and to ‘let loose’ human energy (its ‘positive essence’), without excluding co-operation, the division of labour and some degree of overall collective regulation and control of the productive process. Indeed, another of the striking things about the HRS is the way in which it seems to have been possible for the collectives involved to effect modest, consensually-agreed re-allocations of land use rights to restore equitable distributions and reflect changing household demographics (Kung, 2000). The HRS, of course, only represents *one* way of allocating the rights in the ownership bundle over *one* resource; only one way of reconciling the individual with the social in the means of production. It isn’t the only or necessarily or in all circumstances the best way: on the contrary, the HRS highlights the need to dispel the idea that there is a closed list of institutional possibility. Likewise, bundle-of-rights theories, while not resolving the difficulties we have envisioning a world radically different from our own, can help us avoid the narrowing of perceived possibility that flows from the tendency to view all property arrangements

through the simple prism of (full liberal) ‘ownership’. They remind us of the complexities of social relations, of the blurred boundaries between property and contract/obligation and show that it is possible to try to reconcile the individual and the social both *within* particular property rights structures and by constructing different property arrangements for different resources: individual private property rights structures for some things might co-exist with hybrid property rights structures (like the HRS) for others, and with common property and collective ownership of still others. They can, in other words, help us to expand our imaginative horizons and to articulate alternative visions which recognise the full diversity of possible institutional forms and the many ways in which property can, as Marx suggested, be simultaneously both individual and social.

References

- Against the Grain. (April 2015). Asia's Agrarian Reform in Reverse: Laws taking land out of small farmers' hands. <https://www.grain.org/article/entries/5195-asia-s-agrarian-reform-in-reverse-laws-taking-land-out-of-small-farmers-hands>
- Against the Grain. (Oct 2015). Corporations replace peasants as the vanguard of China's new food security agenda. <https://www.grain.org/article/entries/5330-corporations-replace-peasants-as-the-vanguard-of-china-s-new-food-security-agenda>
- Amin, S. (2013). China 2013. *Monthly Review* 64, Issue 10 (March), pp14-33.
- Anderson, K. (2016). *Marx at the Margins*. University of Chicago Press.
- Arthur, C. J. (1986). *Dialectics of Labour: Marx and his Relation to Hegel*. Oxford: Basil Blackwell.
- Arthur, C. J. (2004). *The New Dialectic and Marx's Capital*. Leiden: Brill.
- Avineri, S. (1968). *The Social and Political Thought of Karl Marx*. Cambridge: Cambridge University Press.
- Banner, S. (2011). *American Property*. Cambridge, MA: Harvard University Press.
- Berki, R.N. (1983), *Insight and Vision: The Problem of Communism in Marx's Thought*. London: Dent & Sons.
- Berle, A. & Means, G. (1968 [1932]). *The Modern Corporation and Private Property*. New York: Harcourt, Brace.
- Blackstone, W (2016 [1766]). *Commentaries on the Laws of England, Vol 2*. Oxford: OUP.
- Brenner, R. (1986). The Social Basis of Economic Development, in John Roemer (ed.), *Analytical Marxism* (Cambridge: Cambridge University Press), pp. 23-53
- Brynjolfsson E., & McAfee, A (2014). *The Second Machine Age*. New York: Norton.
- Cheng, Y. & Tang, S. (1995-6). Agricultural land reform in a mixed system: the

Chinese experience of 1984-1994. *China Information* 10, Nos 3/4, 44-74.

Chitty, A. (2009). Species-Being and Capital, in *Karl Marx and Contemporary Philosophy*, eds. Chitty, A. & McIvor, M. Houndmills: Palgrave Macmillan, 123-142.

Chitty, A (2013). Recognition and Property in Early Marx. *Ethical Theory and Moral Practice* 16 (4), 685-697.

Chuang (2015). The Capitalist Transformation of Rural China', chuangcn.org (August 2015): <http://chuangcn.org/2015/08/jac-review/>

Cui, Z. (1998). Whither China? The Discourse on Property Rights in the Chinese Reform Context. *Social Text*, No 55, 16 (2), 68-81.

Demsetz, H. (2002) Toward A Theory of Property Rights II: The Competition between Private and Collective Ownership. *Journal of Legal Studies*, 31(2), 653-672.

Donaldson, J. & Zhang, F. (2015). Rural China in Transition: Changes and Transformations in China's Agriculture and Rural Sector. *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, 1 (1), 51-74.

Eagleton, T. (2000). Utopia and its Opposites, in *Necessary and Unnecessary Utopias*, eds. Panitch, L. & Leys, C. *Socialist Register* 36, 31-40.

Ellickson, R. C. (1993). Property in Land. *Yale Law Journal*, 102, 1315-1400.

Engels, F. (1962 [1877]). *Anti-Dühring*. Moscow: Foreign Languages Publishing House.

Gramsci, A. (1971 [1930]). *Selections from the Prison Notebooks*. New York: International Publishers.

Gurel, B. (2014). Changing Relations in Chinese Agriculture from Decollectivization to Capitalism. *McGill Sociological Review* 4, 67-92.

Harvey, D. (2000). *Spaces of Hope*. Edinburgh, Edinburgh UP)

Hegel, G.W.F. (1991 [1821]) *Elements of the Philosophy of Right*, trans. H.B. Nisbet. Cambridge: Cambridge University Press.

Ho, P. (2005). *Institutions in Transition: Land Ownership, Property Rights, and Social Conflict in China*. Oxford: OUP.

Hodgson, G. M. & Huang, K. (2013). Brakes on Chinese Development: Institutional Causes of a Growth Slowdown. *Journal of Economic Issues* 47 (3), 599-622.

Hohfeld, W. (1913). Some Fundamental Legal Conceptions as Applied in Judicial Reasoning. *Yale Law Journal*, 23, 1-41.

Hohfeld, W. (1917). Fundamental Legal Conceptions as Applied in Judicial Reasoning. *Yale Law Journal* 26, 710-770.

Holdsworth, W. S. (1966 [1937]). *A History of English Law*, 2nd ed. Volume VII. London: Methuen.

Honoré, A. M. (1961) Ownership', in Guest, A. G. (ed.), *Oxford Essays in Jurisprudence*. Oxford: Oxford University Press.

Horwitz, M. J. (1992). *The Transformation of American Law, 1870-1960*. Oxford, Oxford University Press.

Huang, P., Yuan G., & Peng Y. Capitalization without proletarianization in China's agricultural development. *Modern China*, 38(2), 139-173.

Hudis, P. (2013). *Marx's Alternative to the Concept of Capitalism*. Chicago: Haymarket.

Ireland, P. (1996). Capitalism without the Capitalist: The Joint-Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality. *Journal of Legal History*, 17 (1), 40-72.

Ireland, P. (1999). Company Law and the Myth of Shareholder Ownership. *Modern Law Review*, 62 (1), 32-57.

Ireland, P. Grigg-Spall, I. & Kelly, D. (1987). The Conceptual Foundations of Modern Company Law. *Journal of Law & Society*, 14 (1), 149-165.

Ireland, P. (2009). Financialization and Corporate Governance. *Northern Ireland Legal Quarterly*, 60, 1-33.

Ireland, P. (2016). The Corporation and the New Aristocracy of Finance, in Antoine Lyon-Caen et al (eds), *The Constitutionalization of the World Power System*. Abingdon: Routledge, 53-98.

Joel, A. (2012). Sino-Seismology. *New Left Review* 76, 128-135

Joyce, P. (2002). Land Tenure Security as a Market Stimulator in China. *Duke Journal of Comparative and International Law* 12, (1/2), 7-74.

Kan, K. Ambiguous Right: Land Reform and the Problem of Minor Property Rights Housing. *China Perspectives* 2012/3, 77-80.

Kung, J.K-S. (2000). Common Property Rights and Land Reallocations in Rural China. *World Development*, 28(4), pp.701-719.

Kung, J.K-S. (2002). The Role of Property Rights in China's Rural Reforms and Development. *The Chinese Economy*, 35(3), 52-70.

Lanchester, J. (2015). The Robots are Coming. *London Review of Books*, 37 (5), 5/3/15.

Lardy, N. R. (1983). *Agriculture in China's Modern Economic Development*. Cambridge: Cambridge University Press.

Lin, C. (2013) *China and global capitalism: reflections on Marxism, history, and contemporary politics*. New York, USA : Palgrave Macmillan.

Lin, J. Y. (1990). Collectivization and China's Agricultural Crisis in 1959-1961. *Journal of Political Economy*, 98 (6), 1228-1252.

Locke, J. (1988 [1689]). *Two Treatises of Government*. Cambridge: CUP, 1988. , chapter 5.

Marx, K. (1961 [1867]) *Capital, Volume I*. London: Lawrence & Wishart.

Marx, K. (1970 [1844]). *Economic and Philosophical Manuscripts of 1844* (ed. with an introduction by Dirk Struik, trans by Martin Milligan. London: Lawrence & Wishart.

Marx, K. (1971 [1894]). *Capital, Vol 3*. Moscow: Progress.

Marx, K. (1973 [1857-61]). *Grundrisse: Foundations of the Critique of Political Economy* (Rough Draft), trans. M. Nicolaus. Harmondsworth: Penguin.

Marx, K. (2010a [1871]). The Civil War in France. In D. Fernbach (ed), *The First International and After: Political Writings Volume 3*, London: Verso.

Marx, K. (2010b [1875]). Critique of the Gotha Program. In D. Fernbach (ed), *The First International and After: Political Writings Volume 3*, London: Verso.

Marx, K. & Engels, F. (2010c [1848]) Manifesto of the Communist Party. In D. Fernbach (ed), *The Revolutions of 1848: Political Writings Volume 1*, London: Verso

Mason, P. *Postcapitalism* (2015). London: Penguin.

McLellan, D (2015). Marx's Views on Asiatic Societies. Unpublished.

Meng, G. (2016a). Rethinking Marx's Theory of Property with special reference to the Evolution of Property Relations in the Rural Areas of China. *Studies in Marxism*. 15, forthcoming.

Meng, G (2016b). Contemporary China Rural Landownership with reference to Honoré's Concept of Ownership. *Journal of Economic Issues*, 50(3), forthcoming.

Merrill, T.W. & Smith H.E. (2001). What Happened to Property in Law and Economics?, *Yale Law Journal*, 111, 357.

National Intelligence Council (2017). *Global Trends: Paradox of Progress*. Washington DC.

Nolan, F. (1993). China's Post-Mao Political Economy: A Puzzle. *Contributions to Political Economy*, 12, 71-87.

North, D. C. (2005) The Chinese Menu (for Development). *The Wall Street Journal* April 7

OECD (2011). China's Emergence as a Market Economy: Achievements and Challenges. OECD contribution to the China Development Forum, Beijing, March 20-21, 2011. Available at www.oecd.org/dataoecd/27/17/47408845.pdf.

Palomar, J (2002). Land Tenure Security as a Market Stimulator in China, *Duke Journal of Comparative and International Law* 12(1/2): 7-74.

Plamenatz, J. (1975). *Karl Marx's Philosophy of Man*. Oxford: Clarendon Press.

Polanyi, K. (2002 [1944]). *The Great Transformation*. Boston: Beacon Press

Qi, Jean C. (1999). *Rural China Takes Off: Institutional Foundations of Economic Reform*. Berkeley, CA: University of California Press.

Qiao, S. (2015). Small Property, Big Market: A Focal Point Explanation. *American Journal of Comparative Law*, 63(1), 197-238.

Qiao, S., & Upham, F. (2015). The Evolution of Relational Property Rights: A Case of Chinese Rural Land Reform. *Iowa Law Review*, 100, 2479-2506.

RFGW (Renda Fazhi Gongzuo Weiyuanhui) (ed.) (1998). *Zhonghua Renmin Gongheguo Tudi Guanlifa Shiyi [An Interpretation of the Land Administration Law of the People's Republic of China]*, Beijing: Falü Chubanshe.

Ross, K. (2016). *Communal Luxury: The Political Imagery of the Paris Commune*. London: Verso

Sayers, S. (2011). *Marx and Alienation*. Basingstoke: Palgrave Macmillan.

Singer, J.W. (2000). Property and Social Relations: From Title to Entitlement, in C. Geisler & G. Daneker (eds) *Property and Values: Alternatives to Public and Private Ownership*, 3.

Smith, H.E. (2012). Property as the Law of Things. *Harvard Law Review*, 125, 1691.

Stillman, P.G. (1974). Hegel's Critique of Liberal Theories of Rights. *American Political Science Review*, 68 (3), 1086–92.

Stillman, P.G. (1980). *Person, Property and Civil Society in the Philosophy of Right*. In D.P. Verene (ed.) *Hegel's Social and Political Thought*. New York: Humanities Press 1980.

Streeck, W. 2012. On Re-Forming Capitalism. *The Montreal Review*, March, 2012.

Streeck, W. (2015). Interview with ROAR magazine.
<https://roarmag.org/essays/wolfgang-streeck-capitalism-democracy-interview/>

Streeck, W. (2016) On the Dismal Future of Capitalism. *Socio-Economic Review*, 14, 164-170

Thomas, P. (2008). *Marxism and Scientific Socialism*. London: Routledge.

Underkuffler, L. (1996). Property: A Special Right. *Notre Dame Law Review*, 71(5), 1033-1075.

Underkuffler, L. (2015). Property and Change: The Constitutional Conundrum. *Texas Law Review*, 91, 2029.

Unger, R. (1987). *Social Theory: Its Situation and its Task*. Cambridge, CUP.

Unger, R. (2009). *The Left Alternative*. London: Verso.

Upham, F. (2009). From Demsetz to Deng: Speculations on the implications of Chinese growth for law and development theory. *International Law and Politics* 41, 551-599.

Verdery, K. (1998) Fuzzy Property: Rights, Power, and Identity in Transylvania's Decollectivization. In *Transforming Post-Communist Political Economies*. National Academies Press.

Wallerstein, I., Collins, R., Mann, M., Derluguian G, & Calhoun C (2013), *Does Capitalism have a future?* Oxford: OUP.

Weeks, J. (1982). *Capital and Exploitation*. Princeton: Princeton University Press.

Wong, V. (2014). Land Policy Reform in China. University of Hong Kong, Centre for Comparative & Public Law, Occasional Paper 25.

Wood, E.M. (2002). *The Origin of Capitalism: A Longer View*. London: Verso.

Worthington, S. (2007) The Disappearing Divide between Property and Obligation. *Texas International law Journal*, 42, 917?

Wu, X. (2016, Chinese edition first published 2001). *Contemporary Chinese Rural Reform*. London: Springer

Xu, Zh. (2013). The Political Economy of De-collectivization in China. *Monthly Review*.

Xu, Zh. (2015). The Achievements, Contradictions and Demise of the Rural Collectives in Songzi County, *China. Development and Change*, 46 (2), 339–365.

Ye, J. (2015). Land Transfer and the Pursuit of Agricultural Modernization in China. 15 *Journal of Agrarian Change*, 15, ?.

Zhang, J. (2010). China's Slow-Motion Land Reform. *Policy Review*. ?

Zhang, Q. F. (2013) Comparing Local Models of Agrarian Transition in China. *Rural China*, 10, 5–35.

Zhang, Q. F. (2015) Class Differentiation in Rural China: Dynamics of Accumulation, Commodification and State Intervention. *Journal of Agrarian Change*, 15 (3), 338–365.

Zhang, Q. F. & Donaldson J. A . (2013). China's Agrarian Reform and the Privatization of Land: a contrarian view. *Journal of Contemporary China* 22 (80), 255-272.

Zhu, L. & Jiang Zh. (1993). From brigade to village community: the land tenure system and rural development in China. *Cambridge Journal of Economics*, 17(4), 441-461.